



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



September 23, 2021

Governor's Office of Planning & Research

**September 27 2021**

**STATE CLEARINGHOUSE**

Mr. Terrance DeGray  
San José Evergreen Community College District  
40 S. Market Street  
San José, CA 95113  
[Terrance.DeGray@sjeccd.edu](mailto:Terrance.DeGray@sjeccd.edu)

Subject: Evergreen Valley College Facilities Master Plan, Draft Environmental Impact Report, SCH No. 2021010261, Santa Clara County

Dear Mr. DeGray:

The California Department of Fish and Wildlife (CDFW) received the Draft Environmental Impact Report (DEIR) from the San José Evergreen Community College District (District) for the Evergreen Valley College Facilities Master Plan (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW provided comments on the Notice of Preparation (NOP) for the Project in a letter dated February 19, 2021. Thank you for the opportunity to provide additional comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### **CDFW ROLE**

CDFW is a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act Permit, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** San José Evergreen Community College District

**Objective:** The Project includes demolition and renovation of existing structures, construction of new structures, improvements to vehicular and pedestrian access and circulation systems, and expansion of parking facilities.

**Location:** 3095 Yerba Buena Road, San José, CA 95135, Santa Clara County. The coordinates are 37.300278° N latitude and 121.764167 W longitude (NAD 83 or WGS 84). The Assessor's Parcel Numbers are 66021023, 66021016, 66021014, and 66021022.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

### **DEIR page 1-5, 1.5 Scope of this EIR**

The DEIR states that "Unless new information is presented during the environmental process, the following topics have less-than-significant impacts or can be mitigated to less-than-significant levels, as discussed in the Initial Study: aesthetics, agriculture and forestry resources; biological resources; cultural and tribal cultural resources...". The DEIR does not include a biological resources section in which impacts to biological resources were analyzed and a determination was made that impacts were reduced to less-than-significant levels. In CDFW's February 19, 2021 NOP letter for the Project, we indicated that the Biological Resources section, starting on page 26 of the Initial Study associated with the NOP, clearly shows that the Project will result in significant impacts to biological resources, including special-status species and potential conflict with Natural Community Conservation Plans. CDFW then recommended further impact analyses and mitigation measures be included in the DEIR, and provided specific recommendations for fully assessing the Project's potential impacts on several special-status species.

The DEIR provides a more detailed Project description; however, CDFW is greatly concerned that the DEIR did not incorporate important comments and recommendations outlined in our NOP letter. Our recommendations included evaluating and describing in the DEIR all potential impacts of the Project on special-status aquatic and terrestrial wildlife species and the habitats they depend on. The DEIR should also include appropriate avoidance and minimization measures to offset all potential impacts identified, and appropriate mitigation measures for all impacts that cannot be completely

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avoided. CDFW's outstanding CEQA comments and recommendations that should be addresses in the DEIR are outlined below.

## **Biological Resources**

### **Executive Summary, Page ES-18, Mitigation Measure BIO-1b: Western Burrowing Owl Surveys**

This measure states that nesting western burrowing owls (*Athene cunicularia*), which is a CDFW Species of Special Concern, will not be disturbed until nesting season is over or until young have fledged. However, the measure does not describe how disturbance will be avoided. The DEIR should describe implementation of appropriate and effective measures, such as buffers, that will be implemented to avoid take and reduce impacts to less-than-significant.

This measure also states that, outside of the nesting season, individual owls will be excluded from the "disturbance area". The specific types of disturbance that would result in exclusion, direct or indirect, are not specified. This measure appears to indicate that direct impacts to western burrowing owl habitat could occur. CDFW recommends that the DEIR be revised to include a description of the type of suitable burrowing owl habitat that could be impacted (e.g., nesting or foraging), area to be impacted (e.g., acres), and the type of impact (e.g., temporary or permanent). In order to reduce impacts to a less-than-significant levels, a revised DEIR should propose compensatory mitigation for loss of nesting and foraging habitat.

CDFW recommends following guidance on conducting thorough burrowing owl habitat assessments and protocol-level surveys, establishing protective buffers from Project activities potentially causing disturbance and occupied owl habitat, and implementing effective mitigation measures that are provided in the *CDFW Staff Report on Burrowing Owl Mitigation*, dated March 7, 2012, and available at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

To reduce potential impacts to burrowing owls within or adjacent to the Project area to less-than-significant levels, CDFW recommends the following mitigation measures be included in the revised DEIR:

1. **Habitat Assessment:** A qualified biologist will conduct a literature search for burrowing owl occurrences within and adjacent to the Project area. The qualified biologist will conduct a habitat field assessment that includes all areas that could be directly or indirectly impacted by the Project and will include data such as vegetation type, vegetation structure and presence of burrows.

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2. **Burrowing Owl Surveys:** If western burrowing owl habitat is present within, and surrounding, the Project area, the qualified biologist will conduct burrowing owl presence surveys. Appropriate surveys should be conducted during both the nesting season (February 1 to August 31) and overwintering period. Burrowing owl surveys will follow protocol-level survey methodologies as described in the CDFW 2012 Staff Report.
3. **Burrowing Owl Avoidance:** A protective buffer in which construction activities would not occur should be established. Appropriate buffers typically have a 50 to 500-meter radius and vary depending on the level of disturbance and timing of construction. If the burrowing owls show signs of distress (e.g., defensive vocalizations and/or flying away from the nest), buffer distance should be increased.
4. **Compensatory Mitigation:** If permanent or temporary impacts of the proposed Project to burrowing owl foraging and/or nesting habitat cannot be completely avoided, measures to minimize the impacts of construction on the burrowing owl, and effective compensatory mitigation to offset habitat loss will be implemented. A mitigation plan will be prepared in consultation with CDFW.
5. **Qualified Biologist:** A qualified biologist is an individual who has a degree in biological sciences or related resource management with a minimum of two seasonal years post-degree experience conducting bird nest surveys. During or following academic training, a qualified biologist will have achieved a high level of professional experience and knowledge in biological sciences and special-status species identification, ecology and habitat requirements.

### **California Red-Legged Frog**

The DEIR does not discuss the likelihood of presence of California red-legged frog (CRLF, *Rana draytonii*, Federally Threatened, State Species of Special Concern) within or near the Project area. There are CRLF California Natural Diversity Database (CNDDDB) occurrences to the east of the Project site (CDFW 2021) and potential riparian habitat is present along the northern and southern border of the Project area (unnamed drainage and Yerba Buena Creek). CDFW recommends that a revised DEIR include an analysis of the potential for CRLF to be present within riparian areas adjacent to the Project site and the potential for CRLF dispersal onto the Project site. If CRLF may be present, the DEIR should analyze how Project implementation may directly and indirectly impact CRLF. The revised DEIR should include measures to avoid, minimize, or mitigate for impacts to CRLF to reduce impacts to a less-than-significant levels.

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## **California Tiger Salamander**

The DEIR does not discuss the likelihood of presence of California tiger salamander (CTS, *Ambystoma californiense*, Federal Threatened, State Threatened) within or near the Project area. There are CTS CNDDDB occurrences to the east of the Project site (CDFW 2021) and ponds are present within one mile of the Project area. However, as seen on Biogeographic Information and Observation System aerials, the presence of Yerba Buena Road may prevent dispersal of CTS into the Project area.

CDFW recommends that the revised DEIR include an analysis of the potential for CTS to be present in ponds near the Project site and the potential for CTS to disperse into the Project area with an evaluation of any partial or full barriers that may be present and restrict or impeded CTS movements. If the Project area may support CTS upland or dispersal habitat, and the Project is likely to result in take of the species, CDFW recommends that the Project proponent obtain an Incidental Take Permit under CESA prior the start of Project construction. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

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## CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Kristin Garrison, Environmental Scientist, at (707) 944-5534 or [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov); or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
*Stephanie Fong*

CF047D7F8D234E1  
Stephanie Fong  
Acting Regional Manager  
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

## LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed February 11, 2021.